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15 KST Data, Inc.

16  
17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA  
19

20 KST DATA, INC.,  
a California corporation,

21 Plaintiff,

22 v.

23 NORTHROP GRUMMAN SYSTEMS  
24 CORPORATION, a Delaware  
corporation, and DOES 1 through 25,  
25 inclusive,

26 Defendants.  
27  
28

CASE NO. 2:17-CV-5125-MWF(PJWx)

[Discovery Matter: referred to  
The Hon. Patrick J. Walsh]

**STIPULATED PROTECTIVE ORDER**

Trial Date: June 11, 2019  
Complaint Filed: June 14, 2017

**I.**

**A. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

**B. GOOD CAUSE STATEMENT**

This action is likely to involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of

discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

## II. DEFINITIONS

1. **Action:** this pending federal lawsuit, KST Data, Inc. v. Northrop Grumman Systems Corporation, United States District Court for the Central District of California, Case No. 2:17-CV-5125-MW-PJW.
2. **Challenging Party:** a Party or Non-Party that challenges the designation of information or items under this Order.
3. **“CONFIDENTIAL” Information or Items:** information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.
4. **Counsel:** Outside Counsel of Record and House Counsel (as well as their support staff).
5. **Designating Party:** a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”
6. **Disclosure or Discovery Material:** all items or information, regardless of the medium or manner in which it is generated,

1 stored, or maintained (including, among other things,  
2 testimony, transcripts, and tangible things), that are produced or  
3 generated in disclosures or responses to discovery in this  
4 matter.

5 7. **Expert:** a person with specialized knowledge or experience in a  
6 matter pertinent to the litigation who has been retained by a  
7 Party or its counsel to serve as an expert witness or as a  
8 consultant in this Action.

9 8. **House Counsel:** attorneys who are employees of a party to this  
10 Action. House Counsel does not include Outside Counsel of  
11 Record or any other outside counsel.

12 9. **Non-Party:** any natural person, partnership, corporation,  
13 association, or other legal entity not named as a Party to this  
14 action.

15 10. **Outside Counsel of Record:** attorneys who are not employees  
16 of a party to this Action but are retained to represent or advise a  
17 party to this Action and have appeared in this Action on behalf  
18 of that party or are affiliated with a law firm which has  
19 appeared on behalf of that party, and includes support staff.

20 11. **Party:** any party to this Action, including all of its officers,  
21 directors, employees, consultants, retained experts, and Outside  
22 Counsel of Record (and their support staffs).

23 12. **Producing Party:** a Party or Non-Party that produces  
24 Disclosure or Discovery Material in this Action.

25 13. **Professional Vendors:** persons or entities that provide  
26 litigation support services (e.g., photocopying, videotaping,  
27 translating, preparing exhibits or demonstrations, and  
28

organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

14. **Protected Material:** any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

15. **Receiving Party:** a Party that receives Disclosure or Discovery Material from a Producing Party.

### **III. SCOPE**

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

### **IV. DURATION**

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

### **V. DESIGNATING PROTECTED MATERIAL**

#### **A. Exercise of Restraint and Care in Designating Material for Protection.**

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material

1 that qualifies under the appropriate standards. The Designating Party must  
2 designate for protection only those parts of material, documents, items, or oral or  
3 written communications that qualify so that other portions of the material,  
4 documents, items, or communications for which protection is not warranted are not  
5 swept unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations  
7 that are shown to be clearly unjustified or that have been made for an improper  
8 purpose (e.g., to unnecessarily encumber the case development process or to  
9 impose unnecessary expenses and burdens on other parties) may expose the  
10 Designating Party to sanctions.

11 If it comes to a Designating Party's attention that information or items that it  
12 designated for protection do not qualify for protection, that Designating Party must  
13 promptly notify all other Parties that it is withdrawing the inapplicable designation.

14 **B. Manner and Timing of Designations.**

15 Except as otherwise provided in this Order (see, e.g., second paragraph of  
16 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
17 Discovery Material that qualifies for protection under this Order must be clearly so  
18 designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

- 20 1. for information in documentary form (e.g., paper or electronic  
21 documents, but excluding transcripts of depositions or other  
22 pretrial or trial proceedings), that the Producing Party affix at a  
23 minimum, the legend "CONFIDENTIAL" (hereinafter  
24 "CONFIDENTIAL legend"), to each page that contains  
25 protected material. If only a portion or portions of the material  
26 on a page qualifies for protection, the Producing Party also  
27 must clearly identify the protected portion(s) (e.g., by making  
28 appropriate markings in the margins).

- 1                   2.     A Party or Non-Party that makes original documents available  
2                   for inspection need not designate them for protection until after  
3                   the inspecting Party has indicated which documents it would  
4                   like copied and produced. During the inspection and before the  
5                   designation, all of the material made available for inspection  
6                   shall be deemed “CONFIDENTIAL.” After the inspecting  
7                   Party has identified the documents it wants copied and  
8                   produced, the Producing Party must determine which  
9                   documents, or portions thereof, qualify for protection under this  
10                  Order. Then, before producing the specified documents, the  
11                  Producing Party must affix the “CONFIDENTIAL legend” to  
12                  each page that contains Protected Material. If only a portion or  
13                  portions of the material on a page qualifies for protection, the  
14                  Producing Party also must clearly identify the protected  
15                  portion(s) (e.g., by making appropriate markings in the  
16                  margins).
- 17                  3.     for testimony given in depositions that the Designating Party  
18                  identify the Disclosure or Discovery Material on the record,  
19                  before the close of the deposition all protected testimony.
- 20                  4.     for information produced in some form other than documentary  
21                  and for any other tangible items, that the Producing Party affix  
22                  in a prominent place on the exterior of the container or  
23                  containers in which the information is stored the legend  
24                  “CONFIDENTIAL.” If only a portion or portions of the  
25                  information warrants protection, the Producing Party, to the  
26                  extent practicable, shall identify the protected portion(s).
- 27                  5.     Inadvertent Failures to Designate. If timely corrected, an  
28                  inadvertent failure to designate qualified information or items

1 does not, standing alone, waive the Designating Party's right to  
2 secure protection under this Order for such material. Upon  
3 timely correction of a designation, the Receiving Party must  
4 make reasonable efforts to assure that the material is treated in  
5 accordance with the provisions of this Order.

## 6 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

### 7 **A. Timing of Challenges.**

8 Any Party or Non-Party may challenge a designation of confidentiality at  
9 any time that is consistent with the Court's Scheduling Order.

### 10 **B. Meet and Confer.**

11 The Challenging Party shall initiate the dispute resolution process under  
12 Local Rule 37.1 et seq.

13 The burden of persuasion in any such challenge proceeding shall be on the  
14 Designating Party. Frivolous challenges, and those made for an improper purpose  
15 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
16 expose the Challenging Party to sanctions. Unless the Designating Party has  
17 waived or withdrawn the confidentiality designation, all parties shall continue to  
18 afford the material in question the level of protection to which it is entitled under  
19 the Producing Party's designation until the Court rules on the challenge.

## 20 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

### 21 **A. Basic Principles.**

22 A Receiving Party may use Protected Material that is disclosed or produced  
23 by another Party or by a Non-Party in connection with this Action only for  
24 prosecuting, defending, or attempting to settle this Action. Such Protected Material  
25 may be disclosed only to the categories of persons and under the conditions  
26 described in this Order. When the Action has been terminated, a Receiving Party  
27 must comply with the provisions of section 13 below (FINAL DISPOSITION).  
28

1 Protected Material must be stored and maintained by a Receiving Party at a  
2 location and in a secure manner that ensures that access is limited to the persons  
3 authorized under this Order.

4 **B. Disclosure of “CONFIDENTIAL” Information or Items.**

5 Unless otherwise ordered by the court or permitted in writing by the  
6 Designating Party, a Receiving Party may disclose any information or item  
7 designated “CONFIDENTIAL” only to:

- 8 1. the Receiving Party’s Outside Counsel of Record in this Action,  
9 as well as employees of said Outside Counsel of Record to  
10 whom it is reasonably necessary to disclose the information for  
11 this Action;
- 12 2. the officers, directors, and employees (including House  
13 Counsel) of the Receiving Party to whom disclosure is  
14 reasonably necessary for this Action;
- 15 3. Experts (as defined in this Order) of the Receiving Party to  
16 whom disclosure is reasonably necessary for this Action and  
17 who have signed the “Acknowledgment and Agreement to Be  
18 Bound” (Exhibit A);
- 19 4. the court and its personnel;
- 20 5. court reporters and their staff;
- 21 6. professional jury or trial consultants, mock jurors, and  
22 Professional Vendors to whom disclosure is reasonably  
23 necessary for this Action and who have signed the  
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 25 7. the author or recipient of a document containing the  
26 information or a custodian or other person who otherwise  
27 possessed or knew the information;

- 1                   8.     during their depositions, witnesses, and attorneys for witnesses,  
2                             in the Action to whom disclosure is reasonably necessary  
3                             provided: (1) the deposing party requests that the witness sign  
4                             the form attached as Exhibit 1 hereto; and (2) they will not be  
5                             permitted to keep any confidential information unless they sign  
6                             the “Acknowledgment and Agreement to Be Bound” (Exhibit  
7                             A), unless otherwise agreed by the Designating Party or ordered  
8                             by the court. Pages of transcribed deposition testimony or  
9                             exhibits to depositions that reveal Protected Material may be  
10                            separately bound by the court reporter and may not be disclosed  
11                            to anyone except as permitted under this Stipulated Protective  
12                            Order; and
- 13                   9.     any mediator or settlement officer, and their supporting  
14                             personnel, mutually agreed upon by any of the parties engaged  
15                             in settlement discussions.

16 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
17 **PRODUCED IN OTHER LITIGATION**

18             If a Party is served with a subpoena or a court order issued in other litigation  
19 that compels disclosure of any information or items designated in this Action as  
20 “CONFIDENTIAL,” that Party must:

- 21                   1.     promptly notify in writing the Designating Party. Such  
22                             notification shall include a copy of the subpoena or court order;  
23                   2.     promptly notify in writing the party who caused the subpoena  
24                             or order to issue in the other litigation that some or all of the  
25                             material covered by the subpoena or order is subject to this  
26                             Protective Order. Such notification shall include a copy of this  
27                             Stipulated Protective Order; and  
28

- 1                   3.     cooperate with respect to all reasonable procedures sought to be  
2                             pursued by the Designating Party whose Protected Material  
3                             may be affected.

4             If the Designating Party timely seeks a protective order, the Party served  
5 with the subpoena or court order shall not produce any information designated in  
6 this action as “CONFIDENTIAL” before a determination by the court from which  
7 the subpoena or order issued, unless the Party has obtained the Designating Party’s  
8 permission. The Designating Party shall bear the burden and expense of seeking  
9 protection in that court of its confidential material and nothing in these provisions  
10 should be construed as authorizing or encouraging a Receiving Party in this Action  
11 to disobey a lawful directive from another court.

12 **IX.   A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
13 **PRODUCED IN THIS LITIGATION**

- 14                   1.     The terms of this Order are applicable to information produced  
15                             by a Non-Party in this Action and designated as  
16                             “CONFIDENTIAL.” Such information produced by Non-  
17                             Parties in connection with this litigation is protected by the  
18                             remedies and relief provided by this Order. Nothing in these  
19                             provisions should be construed as prohibiting a Non-Party from  
20                             seeking additional protections.
- 21                   2.     In the event that a Party is required, by a valid discovery  
22                             request, to produce a Non-Party’s confidential information in its  
23                             possession, and the Party is subject to an agreement with the  
24                             Non-Party not to produce the Non-Party’s confidential  
25                             information, then the Party shall:
- 26                             (1)     promptly notify in writing the Requesting Party  
27   and the Non-Party that some or all of the  
28

information requested is subject to a  
confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the  
Stipulated Protective Order in this Action, the  
relevant discovery request(s), and a reasonably  
specific description of the information requested;  
and

(3) make the information requested available for  
inspection by the Non-Party, if requested.

3. If the Non-Party fails to seek a protective order from this court  
within 14 days of receiving the notice and accompanying  
information, the Receiving Party may produce the Non-Party's  
confidential information responsive to the discovery request. If  
the Non-Party timely seeks a protective order, the Receiving  
Party shall not produce any information in its possession or  
control that is subject to the confidentiality agreement with the  
Non-Party before a determination by the court. Absent a court  
order to the contrary, the Non-Party shall bear the burden and  
expense of seeking protection in this court of its Protected  
Material.

#### **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has  
disclosed Protected Material to any person or in any circumstance not authorized  
under this Stipulated Protective Order, the Receiving Party must immediately (a)  
notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
the person or persons to whom unauthorized disclosures were made of all the terms  
of this Order, and (d) request such person or persons to execute the

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
2 A.

3 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
4 **OTHERWISE PROTECTED MATERIAL**

5 When a Producing Party gives notice to Receiving Parties that certain  
6 inadvertently produced material is subject to a claim of privilege or other  
7 protection, the obligations of the Receiving Parties are those set forth in Federal  
8 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
9 whatever procedure may be established in an e-discovery order that provides for  
10 production without prior privilege review. Pursuant to Federal Rule of Evidence  
11 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
12 of a communication or information covered by the attorney-client privilege or  
13 work product protection, the parties may incorporate their agreement in the  
14 stipulated protective order submitted to the court.

15 **XII. MISCELLANEOUS**

16 **A. Right to Further Relief.**

17 Nothing in this Order abridges the right of any person to seek its  
18 modification by the Court in the future.

19 **B. Right to Assert Other Objections.**

20 By stipulating to the entry of this Protective Order no Party waives any right  
21 it otherwise would have to object to disclosing or producing any information or  
22 item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
23 Party waives any right to object on any ground to use in evidence of any of the  
24 material covered by this Protective Order.

25 **C. Filing Protected Material.**

26 A Party that seeks to file under seal any Protected Material must comply  
27 with Civil Local Rule 79-5. Protected Material may only be filed under seal  
28 pursuant to a court order authorizing the sealing of the specific Protected Material

1 at issue. If a Party's request to file Protected Material under seal is denied by the  
2 court, then the Receiving Party may file the information in the public record unless  
3 otherwise instructed by the court.

### 4 **XIII. FINAL DISPOSITION**

5 After the final disposition of this Action, as defined in paragraph 4, within  
6 60 days of a written request by the Designating Party, each Receiving Party must  
7 return all Protected Material to the Producing Party or destroy such material. As  
8 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
9 compilations, summaries, and any other format reproducing or capturing any of the  
10 Protected Material. Whether the Protected Material is returned or destroyed, the  
11 Receiving Party must submit a written certification to the Producing Party (and, if  
12 not the same person or entity, to the Designating Party) by the 60 day deadline that  
13 (1) identifies (by category, where appropriate) all the Protected Material that was  
14 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
15 copies, abstracts, compilations, summaries or any other format reproducing or  
16 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
17 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
18 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
19 and trial exhibits, expert reports, attorney work product, and consultant and expert  
20 work product, even if such materials contain Protected Material. Any such archival  
21 copies that contain or constitute Protected Material remain subject to this  
22 Protective Order as set forth in Section 4 (DURATION).

1 **XIV. ENFORCEMENT**

2 Any violation of this Order may be punished by any and all appropriate  
3 measures including, without limitation, contempt proceedings and/or monetary  
4 sanctions.

5  
6 Dated: September 25, 2017

Respectfully submitted,

7 PERKINS COIE LLP

8 Bruce V. Spiva  
9 Andrew E. Shipley  
Andrew J. Victor  
Alisha C. Burgin

ERVIN COHEN & JESSUP LLP  
Randall S. Leff

LATHAM & WATKINS LLP

David J. Schindler  
Kyle R. Jefcoat  
R. Peter Durning, Jr.

10  
11 By /s/ Bruce V. Spiva \_\_\_\_\_  
12 Bruce V. Spiva  
13 Attorneys for Defendant  
Northrop Grumman  
Systems Corporation

By /s/ R. Peter Durning, Jr. \_\_\_\_\_  
R. Peter Durning, Jr.  
Attorneys for Plaintiff  
KST Data, Inc.

14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

15  
16 DATED: September 26, 2017

17 

18  
19 Honorable Patrick J. Walsh  
20 United States Magistrate Judge

21 **ATTESTATION**

22 Pursuant to Local Rule 5-4.3.4(a)(2)(ii), I, R. Peter Durning, Jr., attest that  
23 all other signatories listed, and on whose behalf this filing is submitted, concur in  
24 this filing's content and have authorized such filing.

25  
26 By /s/ R. Peter Durning, Jr. \_\_\_\_\_  
R. Peter Durning, Jr.

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective  
Order that was issued by the United States District Court for the Central District of  
California on [date] in the case of \_\_\_\_\_ **[insert formal  
name of the case and the number and initials assigned to it by the court]**. I  
agree to comply with and to be bound by all the terms of this Stipulated Protective  
Order and I understand and acknowledge that failure to so comply could expose  
me to sanctions and punishment in the nature of contempt. I solemnly promise that  
I will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with  
the provisions of this Order. I further agree to submit to the jurisdiction of the  
United States District Court for the Central District of California for the purpose of  
enforcing the terms of this Stipulated Protective Order, even if such enforcement  
proceedings occur after termination of this action. I hereby appoint  
\_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number] as  
my California agent for service of process in connection with this action or any  
proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_